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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
09/705,316	11/03/2000	David R. Battiste	33938US	33938US 7718		
7590 12/21/2005			EXAM	INER		
Michael G. Fletcher			DANG, T	DANG, THUAN D		
FLETCHER YODER P.O. BOX 692289			ART UNIT	PAPER NUMBER		
HOUSTON, TX 77269-2289			1764			

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## **Advisory Action**

Application No.	Applicant(s)		
09/705,316	BATTISTE, DAVID R.		
Examiner	Art Unit		
Thuan D. Dang	1764		

Examiner  Thus D. Dang  Tries  The REPLY FILED 02 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.  THE REPLY FILED 02 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in ondition for allowance; (2) a Notice of Appeal (with appeal Teo) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:  The period for reply express 2 Aments from the mailing date of the final rejection.  The period for reply express or (1) the mailing date of this Advisory Action, or (2) the date as from in the final rejection, whichever is later. In no sent price of the final rejection.  Examiner Note: It box 1 is checked, check either box (a) or (a). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY REPLY FILED WITHIN TWO MONTHS OF THE FIRST REPLY REPLY FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRST REPLY WAS FILED WITHIN TW	Potoro the Eiling of an Annual Drief			
-The MAILING DATE of this communication appears on the cover sheet with the correspondence address — THE REPLY FILED 02 December 2005 FALL STO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.  1. ■ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies. (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance. (2) a Notice of Appeal (with appeal to e) in compliance with 37 CFR 1.131. (1) as Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods.  a) ■ The period for reply expires 3, months from the mailing date of the final rejection.  b) The period for reply expires on; (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In or event, however, will the satisticity period for reply expire later than 50 M/GMTHS from the mailing date of the final rejection.  TWO MONTHS OF THE FINAL REJECTION Set MFP? 796. (7) M-RECK BOX) When THE FINAL REJECTION Extensions of time may be obtained under 37 CFR 1.136a). The date on which the petition under 37 CFR 1.136a) and the appropriate extension for under 37 CFR 1.136b) and the appropriate extension for the under 37 CFR 1.136b) and the appropriate extension for under 37 CFR 1.136b) and the appropriate extension for under 37 CFR 1.136b) and the appropriate extension for under 37 CFR 1.136b) and the appropriate extension for under 37 CFR 1.136b) and the appropriate extension for under 37 CFR 1.136b) and the appropriate extension for under 37 CFR 1.136b) and the appropriate extension for under 37 CFR 1.136b) and the appropriate extension for under 37 CFR 1.136b) and the appropriate extension for under 37 CFR 1.136b) and the appropriate extension for under 37 CFR 1.136b) and the set of the final final final final final final final final fina	Before the Filing of an Appeal Brief	Examiner	Art Unit	
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1. ☑ The reply was filled after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affadavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 4.1.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:  a) ☐ the period for reply expires 3 months from the mailing date of the final rejection.  b) ☐ The period for reply expires 3 months from the mailing date of the final rejection.  Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 766.07(f).  Extensions of time may be obtained under 37 CFR 1.135(a). The date on which the petition under 37 CFR 1.13(a) and the appropriate extension fee honder 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened stautory period for reply originally set in the final Office action; or (2) as set forn in (a) above, if decked. Any reply received by the Office later than three months after the mailing date of the final rejection, or (2) as set forn in (a) above, if decked. Any reply received by the Office later than three months after the mailing date of the final rejection or (2) as set forn in (a) above, if decked. Any reply received by the Office later than three months after the mailing date of the final rejection or (2) as set forn in (a) above, if decked. Any reply received by the Office later than three months after the mailing date of the final rejection or (a) as set forn in (a) and the proposed amendment to the original rejection in the final rejection and the original set in the final Office action; or (a) as set forn in (a) and the proposed and final rejection (b) the final rejection (b) in the final reject	The MAILING DATE of this communication appe	ears on the cover sheet with the c	correspondence add	ress
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the period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will be statutory period for reply expire later than SIX MONTHS for the mailing date of the final rejection. Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MEPE 706 07(f).  Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely flied, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).  CMITCE OF APPEAL.  I The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(e).  MENDMENTS  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) They raise new issues that would require further consideration and/or search (see NOTE below);  (c) They raise the issue of new matter (see NOTE below);  (d) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  (d)	this application, applicant must timely file one of the follor places the application in condition for allowance; (2) a No a Request for Continued Examination (RCE) in complian- time periods:	wing replies: (1) an amendment, aff ptice of Appeal (with appeal fee) in o ce with 37 CFR 1.114. The reply mo	fidavit, or other evider compliance with 37 C	nce, which FR 41.31; or (3)
filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(a)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).  AMENDMENTS  3.	b) The period for reply expires on: (1) the mailing date of this A no event, however, will the statutory period for reply expire I Examiner Note: If box 1 is checked, check either box (a) or TWO MONTHS OF THE FINAL REJECTION. See MPEP 7 Extensions of time may be obtained under 37 CFR 1.136(a). The date have been filed is the date for purposes of determining the period of exunder 37 CFR 1.17(a) is calculated from: (1) the expiration date of the set forth in (b) above, if checked. Any reply received by the Office late may reduce any earned patent term adjustment. See 37 CFR 1.704(b) NOTICE OF APPEAL	Advisory Action, or (2) the date set forth ater than SIX MONTHS from the mailing (b). ONLY CHECK BOX (b) WHEN THE 06.07(f).  on which the petition under 37 CFR 1.1 tension and the corresponding amount shortened statutory period for reply origing than three months after the mailing date.	g date of the final rejecti E FIRST REPLY WAS F 136(a) and the appropria of the fee. The appropri inally set in the final Offi ite of the final rejection, o	on. ILED WITHIN te extension fee iate extension fee ce action; or (2) as even if timely filed,
3.	filing the Notice of Appeal (37 CFR 41.37(a)), or any external a Notice of Appeal has been filed, any reply must be filed	nsion thereof (37 CFR 41.37(e)), to	avoid dismissal of th	
(a)		but prior to the date of filing a brief	will not be entered b	ocauco
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. ☐ Applicant's reply has overcome the following rejection(s):	(a) They raise new issues that would require further co (b) They raise the issue of new matter (see NOTE belo (c) They are not deemed to place the application in be appeal; and/or (d) They present additional claims without canceling a	onsideration and/or search (see NO ow); tter form for appeal by materially re corresponding number of finally rej	TE below);	
5. Applicant's reply has overcome the following rejection(s):  5. Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  7. For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☑ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (exwitcher) as follows: Claim(s) allowed: none. Claim(s) objected to: none. Claim(s) rejected: 1-5.8-21.30-33 and 35-39. Claim(s) withdrawn from consideration: AFFIDAVIT OR OTHER EVIDENCE 8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.  REQUEST FOR RECONSIDERATION/OTHER  11. ☑ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see the attachment.  12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s)			٠	
<ul> <li>7.</li></ul>	5. Applicant's reply has overcome the following rejection(s) 6. Newly proposed or amended claim(s) would be a	):	•	
B.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.  REQUEST FOR RECONSIDERATION/OTHER  11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see the attachment.  12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).  Thuan D. Dang Primary Examiner	7. For purposes of appeal, the proposed amendment(s): a) how the new or amended claims would be rejected is pro The status of the claim(s) is (erwill-be) as follows: Claim(s) allowed: none. Claim(s) objected to: none. Claim(s) rejected: 1-5,8-21,30-33 and 35-39. Claim(s) withdrawn from consideration:		Il be entered and an e	explanation of
because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.  REQUEST FOR RECONSIDERATION/OTHER  11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see the attachment.  12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).  Thuan D. Dang Primary Examiner				,
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see the attachment.  12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s)  13. Other:  Thuan D. Dang Primary Examiner	entered because the affidavit or other evidence failed to a showing a good and sufficient reasons why it is necessar 10.   The affidavit or other evidence is entered. An explanation	overcome <u>all</u> rejections under appe y and was not earlier presented. S	al and/or appellant fai see 37 CFR 41.33(d)(	ils to provide a 1).
13. ☐ Other:  Thuan D. Dang Primary Examiner	see the attachment.			nce because:
Thuan D. Dang Primary Examiner		(PTO/SB/08 or PTO-1449) Paper N	No(s)	
	13. ∐ Other:	ffr)	Primary Examiner	

U.S. Patent and Trademark Office PTOL-303 (Rev. 7-05)

Advisory Action/Before the Filing of an Appeal Brief

Part of Paper No. 20051213

Art Unit: 1764

## The Attachment

The argument that the selection of "appropriate wave lengths" is limited by the resolution of the Raman spectrometer is not persuasive since once the appropriate wave lengths is selected, then the equipment having such a selected wave length would be selected to be used.

The argument that one of ordinary skill in the art, without the benefit of the applicants' disclosure, would dismiss low-resolution Raman spectrometry is not persuasive since as discussed in the previous Office action In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The argument that the examiner has not shown nor explained how the Alsmeyer reference the teaches the applicability or the ability to use a low-resolution Raman device in the Lashier process or in the claimed process is not persuasive since in the previous Office action, the examiner takes that position that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the Lashier process having been modified by the Alsmeyer teaching by using appropriate wave lengths provided that wave lengths can be used to monitor the process. In contrast, applicants are totally silent as to why it is not obvious to select a low-resolution Raman for monitoring the process.

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The argument that the polyester process and the Lashier 1-hexene process are very different processes is not persuasive since Alsmeyer discloses generally for chemical processes, namely polymerization which includes the Lashier process.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuan D. Dang whose telephone number is 571-272-1445. The examiner can normally be reached on Mon-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 571-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thuan D. Dang Primary Examiner Art Unit 1764

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